

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

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| DALONTE WHITE, |) | CASE NO. 1:17-CV-1165 |
| |) | |
| Plaintiff, |) | JUDGE PAMELA BARKER |
| |) | |
| vs. |) | <u>REPLY TO BRIEF IN OPPOSITION TO</u> |
| |) | <u>MOTION OF DEFENDANTS FOR</u> |
| CITY OF CLEVELAND, <i>et al.</i> , |) | <u>RECONSIDERATION</u> |
| |) | |
| Defendants. |) | |

Now come the Defendants by and through counsel, and submit their Reply to the Brief in Opposition of the Motion for Reconsideration. While the Motion for Reconsideration inadvertently did not contain the signature block for all defense counsel, it was a Joint Motion and filed with their consent and input.

Plaintiff, in opposing the Motion, misleads the Court on the timing of his discovery “issues.” All of the discovery disputes that he attaches to his Brief in Opposition should have been resolved within the deadline imposed by Rule 37.1.

Plaintiff served the Defendants with last minute discovery requests after hours on September 5, 2019 and after hours on Friday September 6, 2019. Responses were sent when due on or about October 4 and 7, 2019. The discovery deadline was October 6, 2019. The deadline to file any Motion to Compel by October 16, 2019.

Plaintiff had more than adequate opportunity to promptly serve discovery requests so that they could be completed within the proper deadline. He chose to send requests at the last minute. In addition, the “new discovery” served in September was

largely duplicative of the discovery that had already been responded to in December of 2018. Nor was any of the “new discovery” any newly discovered topic that would justify the failure to prosecute the case in discovery in a timely fashion.

All discovery was responded to with adequate time to file a Motion to Compel by the deadline. Plaintiff now wants to reopen his right to raise discovery disputes when he could have done so in a timely fashion.

The only discovery issues that could not have been addressed by the Rule 37.1 deadline are the following:

1. The City’s 30(b)(5) deposition after the ruling in the pending objections (ECF118).
2. A continuation of Plaintiff’s deposition after a ruling on the pending Motion to Compel relating to Plaintiff’s assertion of his Fifth Amendment Rights (ECF115) and possibly after the filing of a ruling on a Motion relating to Plaintiff’s redacted records (ECF114).
3. The rescheduling of two City Depositions.
4. The parties have also discussed limited subpoenas on damages as Plaintiff’s damages are allegedly ongoing.

Plaintiff has offered the reason that he wants to raise discovery issues on any topic. However, he has not offered any reason why any issues other than those listed above could not have been addressed by the 10 day deadline.

Plaintiff’s request to give him an open ended extension to file a Motion to Compel on any topic is unwarranted. Consequently, Defendants request that the Court

deny the Plaintiff's Motion for unlimited Relief from the filing requirements of Civil Rule 37.1 and only grant such relief as it relates to the open items above, and not those discovery responses or depositions that were already concluded or responded to and Plaintiff already had an opportunity to raise with the Court.

Respectfully submitted,

/s/ Kathryn M. Miley

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 2019, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Kathryn M. Miley
Ernest L. Wilkerson, Jr.
Kathryn M. Miley

City/White/reply reconsideration rule 37.1